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File No. Cr. A. Kanara

150



Legal DEPARTMENT
A BRANCH

Subject: Appeals against the
orders of the acquittals
in criminal cases ~~no~~ from
~~205 of 1949~~
Kanara District.

1.2.50

Cr. A. Kanara 150

File No.
152. 150. 150. 150.

Cr. A. Kanara
411-9

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Opinion in the case of State Vs.
Krishna Fakirappa Tamburkar.

In this case one Krishna Fakirappa Tamburkar was charged for offences under section 471 I.P.C. and section 420 I.P.C. in the Court of the Sessions Judge of Kanara at Katwar.

2. The prosecution case was that the accused, his father, and his brother stayed together as a joint family at Janaga, about 8 miles from Haliyal. They owned no lands but cultivated 9 acres of cultivable lands which yielded 180 Bengali maunds of paddy.

3. On 23-12-48, according to the prosecution, the accused went to the Shanbhog of his Firka as he wanted to give the Government 8 bags of paddy being quantum of levy. The Shanbhog gave a Challan Ex.7 and 8 empty bags. On 31.12.48 the accused delivered 8 bags of paddy to the godown-keeper and the paddy weighed 8 bags and 60 lbs. each bag being equal to 168 lbs. On 24-1-49 the accused took the Challan Ex.7, to the Circle Inspector for receiving the price of the paddy supplied by him. On that day there were similar other fifty applicants who had gone to the Circle Inspector to receive payments. Whole day the Circle Inspector was busy in checking Challans. He therefore called the cultivators on the next day in the early morning to receive payment. On 25-1-49, therefore, at about 8 a.m. the accused went to receive payment. The prosecution alleges that the Circle Inspector gave Rs.2029-7-3 to the accused as being the

amount due in respect of 88 bags and 60 lbs. of paddy. On 26-1-49 the Challan was sent by the Circle Inspector to the sub-treasury. On 24-2-39 while the accounts were being audited the fraud was detected and the Mamlatdar was immediately informed. On 25-2-49 the Mamlatdar ordered the Circle Inspector to file a complaint. On 26-2-49 the accused was arrested at Hubli. On 27-2-49 several Panchanamas were made. The prosecution case thus was that the accused altered the entry in the Challan from 8 bags 60 lbs. to 88 bags 60 lbs. and thus received Rs.2029-7-3 instead of Rs.193/- and odd.

4. The defence of the accused was that he was not responsible for any alteration in the Challan. He had merely received Rs.193/- and odd and nothing more.

5. The police during investigations obtained the signature of the accused and sent it along with the alleged forged Challan to the hand-writing expert for his opinion. The hand-writing expert gave his opinion that the alteration of the words 'eight into "eighty eight" and the figure 8 into 88 were not in the hands of the accused.

6. The oral evidence led in the case was far from satisfactory and it was not proved that the alteration was there when the Challan was presented to the Circle Inspector on 24-1-49. After its presentation, the Challan remained with the Circle Inspector from 24-1-49 to 25-1-49 when the payment was made to the accused.

7. As far as the payment is concerned, though it is true that the entry as to payment was signed by the accused but the amount and the details etc. were all in English which it was not possible for the accused to read and it was believable that the accused signed the said entry, without knowing the alteration etc. and in the belief that he was signing a receipt for the amount of Rs.193/- and odd to which he was entitled.
8. The only piece of evidence on which the prosecution could possibly rely was the confession of the accused which was recorded on 6-2-49. The accused was sent to the Resident First Class Magistrate on 6-3-49 ~~in the~~ which was a Saturday in the evening and his confession was recorded on Sunday, 6-3-1949 in the morning. The learned Judge observes that the said confession did not contain any admission as to the knowledge of the forgery or as to the receipt of Rs.2029-7-3 in respect of 88 bags and 60 lbs. of paddy ^{sold} to the Government. In fact it contains no admission of guilt on the part of the accused. The only statement of ~~of~~ the fact which could be utilised against the accused was that the accused having stated that he was paid Rs.2029-7-3 and that thereupon he told the Circle Inspector that so much amount was not due to him and that he had delivered only 8 bags and 69 lbs. of paddy. Such a statement would not amount either to the admission of his guilt under section 471 I.P.C. or admission of cheating under section 420 I.P.C. The accused's explanation of the confession

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in the Court of the Committing Magistrate was that he made that statement Ex.34 as he found that the entry of the ~~xx~~ payment of Rs.2029-7-3 bore his signature. Before the Sessions Court his explanation was that he made that statement because he was beaten by the police. It is true that there was no evidence as to the alleged beating by the police but at the same time it is equally true that the accused being confronted with his signature on the entry as to the payment of amount of Rs.2029-7-3, might have been induced by the police to make the statement which he did before the Resident Magistrate First Class. Thus it was obvious that the statement Ex.34, was neither voluntary nor true. If the confession as recorded was true then the story of the accused was that he had told the Circle Inspector that he had sold only 8 bags and 60 lbs. of paddy and that he was not entitled to Rs.2029-7-3. If that ^ewere so, it is very difficult to imagine as to how the Circle Inspector did not then realise the mistake and recover the amount from the accused, leaving only that much amount with him, to which he was entitled, to. According to the evidence of the P.S.I. the accused expressed a desire to confess on 27-2-49 while he was not sent to the Magistrate till 5-3-49. The explanation of the P.S.I. was that the accused was prepared only to admit a part, viz. the fact of the payment and that he therefore approached the D.S.P. for consultation. The whole story about P.S.I.'s approaching the D.S.P. for consultation is hardly believable and the subsequent haste by the ~~Public Police~~

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P.S.I. to get the confession recorded as pointed out in the judgment of the learned Sessions Judge raises a doubt as to the genuineness of the voluntary nature of the said confession.

9. In this state of evidence the Assessors gave their unanimous opinion that the accused was not guilty of the offences he was charged with and the learned Judge also came to the same conclusion. The accused was therefore acquitted by him.

10. Considering the evidence as a whole, I feel great hesitation in coming to any conclusion contrary to the one arrived at both by the Assessors and the learned Sessions Judge.

11. I do not advise an appeal against the order of acquittal in this case.

K. M. Choudhary

Government Pleader, High Court.

Bombay,

24th April 1950.

Opinion in the case of State Vs. 11 B9 21

Gopal Narayan Hegde.

In this case Gopal Narayan Hegde was charged in the Court of the Resident Magistrate, First Class, Honavar.

2. The prosecution case was that Mr. Hegde took charge as Treasury Aval Karkun at village Bhatkal on 1.1.47 and was in charge of the said office up to 15-3-47. As Treasury Aval Karkun he was in custody of the Government monies received in the treasury head-quarters at Bhatkal. There was an inspection of the said amounts from time to time and the last inspection was on 28-2-47 when the cash in the treasury was found to tally with the records. On 12-3-47, for the first time, it was detected by the accused and Mr. Vinekar, Ex.11, who was working as Shroff clerk in the office, that 1600 currency notes of Rs.5/- each totalling to Rs.8000/- were missing from the chest box. The accused was therefore charged as above in respect of the said amount.

3. The Mahalkari, Ex.1, the Dafedar, Ex.4, the Shroff clerk, Ex.11 and Mr. Taggarse who was the predecessor of the accused, were examined among others for the prosecution to prove the guilt of the accused. The learned Magistrate believed their evidence and convicted the accused of the offence he was charged with and sentenced him to undergo rigorous imprisonment for 1 year and to pay a fine of Rs.2000/- and in default to suffer rigorous imprisonment for 6 months.

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441 ~~88~~

4. The accused filed an appeal against the said conviction and sentence in the Court of the Sessions Judge of Kanara, at Karwar (Criminal Appeal No.68 of 1948). The learned Sessions Judge regarded the above witnesses as being interested and therefore he was not prepared to accept their evidence in toto. He took the view that the Mahalkari, the Dafedar and the Shroff Clerk each of them was interested in the sense that each of them would desire to throw the blame on someone else other than himself. He therefore discarded their evidence and felt doubts as to the guilt of the accused and therefore acquitted him, setting aside the conviction and sentence imposed by the Trial Court.

5. This is a serious matter for the State and it is too much to say that every officer who had something to do with the treasury office at Bhatkal was interested in the sense that he levelled charge of mis-appropriation against the accused. There being no particular enmity alleged between these witnesses, and the accused, it is difficult to discard their evidence on the only ground that they happened to be also officers concerned with the treasury office at Bhatkal.

6. The matter therefore should be taken to High Court in order that the appreciation of the oral evidence on record may be tested in its proper perspective.

7. I advise an appeal against the order of acquittal in these circumstances

18 March 1950
Government Pleader, High Court.

Bombay,
20th March 1950.

G. O. P.—(J) 70-439-5-30
G. O, L. D., No. 1193 dated 1-1-1950
G. P. CAMBAY. 3 JUN 1950

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[Govt. Pl. H. C. Bom.—Spl. Form No. 2, e

No. 3128

From

THE GOVERNMENT PLEADER, HIGH COURT,

To The Secy. to Govt. Legal Deptt. ^{BOMBAY;} Bombay.

THE DISTRICT MAGISTRATE OF
THE COLLECTOR OF

Bombay,.....1/6/50.....195

SIR,

Referring to.....G.R.L.D. 4704

dated.....6.4.50.....195 , I have the honour to inform

Criminal Appeal No. 280/1950
(BY GOVT)

STATE OF BOMBAY.
V/S

GOPAL NARAYAN HEGDE

you that the
Case noted in
the margin was
heard by the
High Court on

15.5.1950 when the following Order was passed:—

" Dismissed."

2. Being summarily dismissed no judgment has been recorded
by the High Court of Bombay in this case.

Your most obedient servant,

B. C. Shah

for Government Pleader, High Court.

956)

5-1-50

B

Criminal Appeals.

In the High Court, Bombay --
against acquittal (Kanara).

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 4104
Bombay Castle, April 1950.

Endorsement from the District Magistrate Kanara No. TRD-733,
dated the 10th January 1950, Forwarding papers in the case noted in

..... the margin and requesting
In the Court of the Sessions Judge
of ~~Kanara~~ Kanara
at Karwar.
Criminal Appeal No. 68 of 1948.
Gopal Narayan Hegde. Appellant
Vs. (Accused.)
Imp.
(Offence under section 409 I.P.C.)
..... against the order of
acquittal passed by the Sessions Judge, Kanara, on 28th November
1949 in respect of the accused in the case noted in the margin.

RESOLUTION :- The Government Pleader, High Court, Bombay,
is directed to file an appeal in the High Court, Bombay, under
section 417 of the Code of Criminal Procedure, 1898, against the order
of acquittal passed by the Sessions Judge, Kanara on 28th November
1949 in respect of the accused in the case referred to in the margin.

2. The District Magistrate, Kanara, is directed to forward
immediately and direct to the Government Pleader, High Court one
certified copy of ^{the} judgment of ^{the} Resident Magistrate, First Class,
^{Kanara} Honavar ~~xx~~ dated the 27th November 1949.

By order of the Governor of Bombay,

Original

54
T.P. Ghogale.

Deputy Secretary to Government.

To
The Home Department,
The District Magistrate, Kanara,
The Government Pleader, High Court, Bombay (with the papers
of the case received with the letter of the
District Magistrate, referred to above).

Issued
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Subd
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Criminal Appeals.
In the High Court, Bombay--
against acquittal (Kanara).

GOVERNMENT OF BOMBAY.
Legal Department.
Resolution No. 14169
Bombay Castle, 9th October 1950.

Read Government Resolution, Legal Department, No.4704,
dated the 6th April 1950.

Letter from the Government Pleader, High Court, Bombay

In the Court of the Sessions Judge of Kanara: No.3128,
at Karwar dated the 1st
Criminal Appeal No.68 of 1948. June 1950.
Gopal Naryan Hedge..... Appellant
vs. (Accused). Stating that
Imp. Criminal Appeal
(Offence under section 409 of I.P.C.) No.280

of 1950, filed by Government against the acquittal of the
Accused in the case noted in the margin, was dismissed by the
High Court, Bombay, on 15.5.1950.

RESOLUTION: The result of the appeal is recorded.

By order of the Governor of Bombay,

original 124-20

T.P.Ghogale,
Deputy Secretary to Government.

To

The Home Department,
The District Magistrate, Kanara.

KMK/

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AD

Issued
exp
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DS

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f. -

Opinion in the Case of Rex Vs. Ganpatrao Teekasa

Ladawa.

.....

1. In this case the accused was charged in the Court of the Resident Magistrate, First Class at Sirsi under Section 23(1)(a) read with Section 8(2) & 9(2) and 23(1)(b) read with Section 4 of the Petroleum Act 1934.

2. The prosecution alleged that from information received the Police went to the office of the Kalburgi Motor Service at Sirsi on 30th January 1949. On opening the store room they found 2 barrels containing petrol kept there. A panchnama was duly made and the contents of the barrels were measured and they were found to contain 53½ gallon. The accused could not have stored so much quantity of petrol without a license. The accused was therefore charged and prosecuted under Section 23(1)(a) read with Section 8(2) and 9(2) and Section 23(1)(b) read with Section 4 of the Petroleum Act 1934. The accused pleaded not guilty, he denied that he was a manager of the Kalburgi Motor Company. He denied that he had stored the petroleum. He further pleaded that the petroleum found was not one which was classified as dangerous.

3. The Learned Magistrate came to the conclusion that

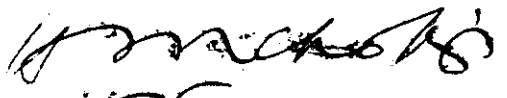
the petrolium attached was not dangerous petrolium and he therefore acquitted the accused.

4. The reasoning of the Learned Magistrate appears to be unsatisfactory.

5. I therefore advise an appeal against the order of acquittal in this matter.

B O M B A Y.

24th January 1950.


Government Pleader, High Court.

PRR/-

2522-19-165
Criminal Appeals,
In the High Court, Bombay--
against acquittal (Kanara)

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 2060
Bombay Castle, 11/2 February 1950.

Letter from the District Magistrate, Kanara No.0/2976

A In the Court of the Resident Magistrate : dated the 31.12.49.-
First Class at Sirsi. :
Criminal Case No,229 of 1949. : Forwarding papers
India :
vs. : in the case noted
Ganapatrao Teekasa Ladawa. : in the margin and
(Offence under section 23(1)(a) r/w :
S.8(2) & 9(2) & 23(1)(b) r/w S.4 : requesting that
of the Petroleum Act,1934. A :
----- appeal under

section 417 of the Code of Criminal Procedure, 1898, may be made to the High Court, Bombay, against the order of acquittal passed by the Resident Magistrate, F.C., Sirsi, on 20.9.1949 in respect of the accused in the case noted in the margin.

RESOLUTION: The Government Pleader, High Court, Bombay is directed to file an appeal in the High Court, Bombay under section 417 of the Code of Criminal Procedure, 1898, against the order of acquittal passed by the Resident Magistrate, First Class, Sirsi on 20.9.1949 in respect of the accused in the case referred to in the margin.

By order of the Governor of Bombay,

Original

T.P.Ghogale,

Deputy Secretary to Government.

To

The Home Department,
The District Magistrate, Kanara,
The Government Pleader, High Court, Bombay (with the papers of the case received with the letter of the District Magistrate, referred to above.)

artificial copy of judgment & Memo of Instructions)

KML/9

Subd for sign

Other

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Here we heard from
the C.P. re: definition
in S.2(b) with notes
spmt. taking order
1.8.1950-2

Jmkdi P, P, (J) J 9-4000-6-49
G. O., L. D., No. 1193 dated 7-12-15

(Govt. Pl. H. C. Bom. Spl. Form No. 2)

No. 1973.

From

THE GOVERNMENT PLEADER, HIGH COURT,

The Secretary to Government, Legal Department,

THE DISTRICT MAGISTRATE OF

THE COLLECTOR OF

BOMBAY,
Bombay.

Bombay, 11-4-50 194

Sir,

Referring to G. R. L. D. No. 2060

dated 11.2.1950 194, I have the honour to inform

Criminal Appeal No. 134 / 50 (By Govt.)

The Govt. of the State of Bombay.

V/S

Ganpatrao Teekasa Ladawa.

you that the
Case noted in
the margin was
heard by the
High Court on

13.3.1950

when the following order was passed:—

" Dismissed."

2. The Court observed that the prosecution must produce some evidence of the test applied. Having thus observed the appeal was dismissed summarily
3. No judgment has been recorded by the High Court in this case.

Your most obedient servant.

Government Pleader, High Court.

subd for information

The result was to be recorded
by a G.R.

The result is surprising & it may have
embarrassing repercussions. In effect
it would mean that any quantity of petrol
used for running motor cars may be kept
with impunity.
D.S. 16754

R.C.H. I would like to discuss this
with the G.P.
See 16754
R
1524

The case was discussed with the G.P. High
Court. It appears that the Court insisted upon the
test given in the Petroleum Act being applied.

See 16754
R
24/4
26/4/50

L.D. 5671
8 26-4-50

L.D.

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Criminal Appeals.
In the High Court, Bombay
against acquittal (Kanara)

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No. 14172
Bombay Castle, 9th Oct. 1950.

Read Government Resolution, Legal Department, No. 2060,
dated the 11-2-1950.

Letter from the Government Pleader, High Court, Bombay,

In the Court of the Resident Magistrate : No. 1973, dated
First Class at Sirsi. : the 11-4-1950 -
Criminal Case No. 229 of 1949. : Stating that
India : Criminal Appeal
Vs. : No. 134 of 1950, filed
Ganapat Rao Teekasa Mawawa. : by Government aga-
(Offence under section 23(1)(a) r/w : against the
S.8(2) & 9(2) & 23(1)(b) of S.4 :
of the Petroleum Act, 1934. :

acquittal of the Accused in the case noted in the margin,
was dismissed by the High Court, Bombay, on 13-3-50.

RESOLUTION :- The result of the appeal is recorded.

By order of the Governor of Bombay,

Original... 470

(T.P. Ghogale),
Deputy Secretary to Government.

To

The Home Department,
The District Magistrate, Kanara.

HSP
3/10

Issued
HSP
9/10
Subd
for sign
4/10

31 227

Judgment recorded by the High Court in Criminal
Application for Revision No. 183 of 1942 in the case of
Imperator Vs. Yeshya Naga Harikantar.

Mr. D.D.Yennemadi, Advocate for the Accused.

Mr. R.A.Jahagirdar, Government Pleader for the Crown.

Coram: Beaumont, C.J. and Wassoodew, J.

16th July 1942.

Oral Judgment (Per Beaumont, C.J.):-

The accused in this case was convicted under Section 43 (1)(a) of the Abkari Act for being in possession of ~~exchange~~ illicit liquor. He was found to be in possession of a large bottle which contained one tea spoonful of illicit liquor and a smaller bottle which contained four or five drops. The quantity was so small that the prosecution were unable to apply the test of testing the liquor, for fear there would have been nothing left to produce in Court, and apparently for a similar ~~reason~~ reason they were unable to send it to the Chemical Analyser, as it might have evaporated in the process. So they endeavoured to prove the contents of the bottles by calling ^{the} sub-Inspector and the Excise Constable to say that it smelt like Goa liquor. That is very unsatisfactory evidence. For aught we know, a great many substances may smell like Goa liquor.

The conviction must be set aside. Fine, if paid, to be refunded.

By the Court,

Sd/- -----

Deputy Registrar.

U/-
9/7

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X

Opinion in the Case of the State Vs.
Ira Rama Naik.

The accused, ⁹Ira Rama Naik in this case is a paralytic, and the charge against him was that he murdered his eldest brother's wife. The suggestion was that the accused had a lustful eye on Kariyamma and was even troubling her. A complaint was filed by Kariyamma. The prosecution case rest on the evidence of Timma Ex.No.10 and Baswani Ex.No.11. There is also the confession Ex.No.20. The other pieces of circumstantial evidence was that the scythe was of the accused, that there was blood stain on the Panja of the accused, that he was seen running ~~by~~ the two witnesses Timma Ex.No.10 and Baswani Ex.No.11, that he jumped into the well and that his name appeared in the first information Ex.No.5. It is true that in this case the mother Ex.No.23 and the two ⁰brothers Puttu and Kariya Exs.Nos. 24 and 25 are examined and they to some extent support this story of the prosecution. But the learned Judge was very much impressed by the fact that the accused was a paralytic and that he was attacked by paralysis ~~before~~ an year before the offence and the learned Judge is impressed by the fact that such a person could not have committed the offence. The learned Judge has also disbelieved the evidence of Timma and has come to the conclusion that probably he is not a witness of truth. The story told by Timma and Baswani has been held by the learned Judge to be unnatural. In the first information Timma's name

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is not mentioned and the learned Judge thinks that both these witnesses were not present at the time of the offence. The learned Judge also holds that the scythe is not proved to be of the accused. As regards the blood on the Panja of the accused the learned Judge thinks that it might be due to the injury on his foot. The confession Ex.No.20 is held by the learned Judge to be not natural and he has been impressed by the fact that it would not be difficult to obtain the confession from a paralytic such as the accused. The learned Judge has stated that the fact that the accused jumped into the well and that his name appeared in the first information report Ex.20 are important circumstances in favour of the prosecution but he has dis-believed the explanation of the accused that he slipped into the well. But even so he says that these two circumstances are not conclusive. The learned Judge also thinks that the possibility of some other person having committed the murder is not excluded. In para.17 the learned Judge sets out the circumstances which according to him are in favour of the prosecution but he says that while these circumstances do raise a strong suspicion regarding the guilt of the accused, it is counter-balanced by the infirmity of the accused. He thinks that the benefit of doubt must be given to the accused. It is true that there are several circumstances in favour of the prosecution but if the presence of Timma on the scene of offence is doubted then I do not think that

there is strong evidence to connect the accused with the crime. The learned Judge himself has dis-believed the evidence of Timma Ex.No.10 and Baswani Ex.No.11. The other circumstances, if this evidence is dis-believed, cannot prove the guilt of the accused conclusively. In these circumstances as the question would turn on an appreciation of evidence I do not think I can advise an appeal against the acquittal.

2. I therefore, do not advise an appeal in this case.

B. G. Shahar

Additional Assistant Government Pleader.

High Court,

Bombay 11th May 1950.

Judgment recorded in the High Court in Criminal Appeal No. 417 of 1950 (By Government) in the Case of State Vs. Ira Rama Naik.

The Government Pleader for the State.

Mr. K.R.Bengeri for the accused (appointed).

Coram: Bavdekar and Dixit JJ.

14th November 1950.

Oral Judgment (Per Dixit J.) :-

This is an appeal by the State against the acquittal of the accused in respect of a charge of murder. The charge against the respondent was that he on or about the 31st May 1949 at 8 a.m. at Husur did commit murder by intentionally causing death of Kariyamma kom Kariya of Husur.

The accused Ira is one of the three sons of one Rama. His eldest brother is one Kariya who had a wife by name Kariyamma. The accused has another brother by name Puttu. The accused was not married and Puttu was a married man. It appears that the accused was suffering from paralysis a year or so before the date of the offence which is 31st May 1949. The prosecution story is that the accused had evil intentions upon the wife of his eldest brother Kariya and that is the ~~mayib~~ motive suggested for the offence of murder. The offence is said to have taken place at about 8 a.m. on the 31st May 1949. The prosecution relies in support of the story upon the evidence of two persons viz. Timma and Basavanni. Timma was, at the material time, working at the house of one Manja, where he was thatching his house. The distance between the house of Manja and the place where the accused is said to have done Kariyamma to death is about 60 fathoms, that is ~~say~~ say, speaking broadly, at a distance of about 360 feet. The evidence of Timma is that he was attracted by shout "Ayoyo" and when he heard of the shout he ran by the footpath towards a gundi. At that house was working also

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also another man by name Basavanni and Basavanni followed Timma. The evidence of Timma is that while he was about 10 or 12 fathoms from the scene of offence, he saw the deceased fallen on her back and that the accused gave her a blow with a scythe over her stomach. So far as the direct evidence is concerned, this is the only eye witness in the case.

Basavanni his companion, followed Timma to the place, but Basavanni himself did not see the attack upon the woman. He saw the accused running away. The evidence of Basavanni is that he saw the woman fallen flat on her back. It was this Basavanni who went to the Police Patil to give information about the commission of the offence. It appears that shortly after the alleged offence the accused ran towards a Government well, the situation of which can be seen from the map produced in the case. It is the prosecution case that the accused jumped into the well and as a result of the efforts of persons who were nearby he was rescued and brought out of the well.

In this connection we have the evidence of two persons.

There is the evidence, in the first place, of a witness by name Shiva. His evidence is that he saw the accused coming from the north and jumping into the well. His evidence is that the accused held his hand on the protection wall, lifted his legs and jumped into the well. It appears from the evidence that the witness lowered a rope into the well from a pulley and he asked the accused to catch hold of it which the accused did and from the other pulley a basket was lowered, being tied to a rope and thereupon the accused sat in the basket and he was taken out of the well. The evidence of this witness is supported by the evidence of Badiya, whose evidence is that he supplied the basket and the rope for taking the accused out. It is important to note that according to the witness Shiva, he saw the accused swimming and as soon as the basket and the rope were thrown below, the accused caught hold of the rope immediately and he sat in the basket and he was taken out.

Besides the above evidence the prosecution relied

upon a confession. It was recorded by a Magistrate on the 4th June 1949. Now, the learned Sessions Judge has not accepted this confession as being voluntary and has omitted this evidence from consideration. Now, it seems that the accused was brought to the Magistrate in the evening of 3rd June 1949 and since the Magistrate had no time he was remanded to the sub-jail. The accused was brought before him next morning. He was asked whether he was prepared to make a confession & two hours' time was given to him for reflection. On the expiration of that period the learned Magistrate recorded the confession of the accused. Now, time given to the accused to make up his mind whether he was prepared to make a confession is, in our opinion, too short in order to enable the accused to consider whether or not he should make up his mind in order to make a confession. There is no hard and fast rule as to the precise time which should be given to an accused person in order to ask him whether he was prepared to make a confession and all that the law provides is that he should be given a reasonable time. But we think this time was too short. Besides this infirmity as regards time, there is also another infirmity and that is that the questions which were put to the accused, at least some of them, savour of a cross-examination of the accused. One of the questions put to the accused by the learned Magistrate was "What have you to say as regards the incident of the death of Kariyamma ?" In our opinion, this was not a question put to the accused, in the proper form. The accused should have been left to narrate the events as best as he possibly could, and on the whole, we think that the learned Sessions Judge was right in omitting this confession from consideration.

Then there is the medical evidence and the record is quite clear upon the point that the accused was suffering from paralysis a year or so before the date of the offence. The evidence of the medical officer is to the effect that when he examined the accused he noticed that the right side of

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side of the body of the accused was not affected but that the left side was. When the accused was examined by the Magistrate for the purpose of confession, the Magistrate took the view that both the right and the left sides of the body of the accused were affected, and Mr. Bengeri has made a point in this connection. The contention is that in this state of the evidence, that is to say, the evidence of the medical officer and of the Magistrate who recorded the confession, it would seem that the accused was not capable of committing the offence of murder. But his submission is, in our opinion, clearly wrong. It is to be borne in mind, in the first place, that shortly after the alleged incident the accused made himself scarce, ran towards a well, jumped into it and was brought out of the well. The height of the well is 45 feet & the water in the well was 12 feet deep. It is important to note that the well is surrounded by a parapet wall, so that it is not without some effort that the accused could throw himself into the well. Then again a rope was thrown into the well as well as a basket and the fact that the accused by himself sat in the basket and came out of the well would show that the accused had sufficient strength, with the help of which he could himself and by himself come out of the well.

There is no dispute that Kariyamma died on the 31st May 1949. The medical evidence shows that she had three injuries. These injuries have been described in detail at page 52 of the record. One of these injuries was on the left side of the neck lower part. The second injury was an incised wound on the abdomen and the third injury was one perpendicular incised wound on the back left side. The medical officer who has been examined in this case gave as his opinion that the death was caused by shock and haemorrhage as a result of injuries Nos. 1 and 2, so that there is no dispute upon the record that whoever was the assailant, the attack upon the woman resulted in the death and that there was a clear intention to murder. The question, however, remains whether

whether it was the accused who was responsible for the murder of the deceased. In favour of the prosecution is the fact that in the first information which was given to the police patil the name of the accused was mentioned as the assailant of the woman. In favour of the prosecution is also the fact in the shape of the subsequent conduct of the accused. The accused in his statement before the Sessions Court said that he slipped into the well. That is a defence which it is not possible to accept in any circumstances. Question then remains as to whether we should convict the accused upon the evidence of Timma who is the only eye-witness in the case. If we are in a position to accept Timma's evidence, then there is no difficulty in holding that the accused was responsible for the death because the subsequent conduct of the accused would go to support the prosecution story. But we cannot convict the accused merely upon the subsequent conduct. In the first place, we are not prepared to accept the evidence of Timma, who is the only eye-witness in the case. Now, there are three injuries upon the person of the deceased, so that the deceased must have been attacked on three different occasions. Looking to the distance between the place where Timma was working and the place where the offence is said to have taken place, it seems clear that it would take some time for the witness to get down from the house and to go to the place of the offence. The evidence of Timma is to the effect that he himself saw the third of the three blows upon the deceased. Mr. Bengeri for the respondent has made a point that having regard to the distance between the place where the witness was working and the place where the woman is said to have been done to death, it is not possible for the witness to see the attack upon the woman. In our opinion, there is some force in this contention. The other circumstance upon which Mr. Bengeri relies in support of the innocence of the respondent is the fact that the witness himself admitted

admitted that it was not possible for him to see what he is alleged to have seen. Now, looking to the panchanama which is made of the scene of offence, there does not seem to be much force in this contention. But even so, the point which we have to consider is whether in a case like this which is a very serious charge of murder we should convict the respondent on the charge of murder upon the strength of a testimony of a single witness and we think that unless we are prepared to accept the evidence of Timma, we should be slow to reverse the finding of the learned Sessions Judge. The deceased was of about 25 years of age. Admittedly, the accused is suffering from paralysis. There is no doubt that the deceased must have made some sort of struggle. If the attacks were made in quick succession, one after the other, it would not be possible for witness Timma to see what he is alleged to have seen. But if there was some interval between the different attacks made upon the deceased, it would be possible for the witness to see the third attack which he is said to have seen on the occasion. But there is no clear evidence to show that it was possible for him to go to the place within the time and to have himself seen the attack upon the deceased in the morning of that date, so that in the result, we must be slow to accept the evidence of Timma.

The prosecution relies upon the evidence of motive. In this case the evidence has been given in that connection by the mother of the accused and by his two brothers. In substance, the evidence is to the effect that the accused who was not a married man had evil designs upon the wife of his eldest brother. That is the evidence of the mother and also the evidence of the eldest and the other brother. But as one reads the evidence of the eldest brother, one would find his evidence extremely exaggerated. But after all, the evidence in the shape of motive is a weak type of evidence and in the main, unless we are --

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prepared to accept the evidence of Timma, that evidence would not be of very material assistance.

In these circumstances the question to be decided is whether there is adequate evidence in order to prove the charge of murder. As I said already, there is --- undoubtedly the evidence of subsequent conduct on the part of the accused which is an important piece of evidence and although Mr. Bengeri has sought to explain that evidence we are by no means satisfied that his explanation is correct. But as I said, that evidence would be material only if we are in the first instance prepared to accept the direct testimony of Timma and as, in our opinion, it is not safe to act upon that evidence, it seems to us that the order of acquittal made by the learned Sessions Judge is right.

In the result, therefore, we see no reason to interfere with the order of the Court below. The order of acquittal passed by the learned Sessions Judge is correct and this appeal will stand dismissed.

XXX

KBP/-
EEN/-

MLA

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Criminal Appeals.

In the High Court, Bombay --
against acquittal (Kanara).

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 11752
Bombay Castle, 16th July 1952.

Read Government Resolution, Legal Department No. 7146,
dated the 26th May 1950.

Letter from the Government Pleader, High Court,

-----	Bombay,
In the Court of Sessions Judge of Kanara. :	No. 11884,
Sessions Case No. 12 of 1949. :	dated the
State :	23rd
vs, :	November
Ira Rama Naik. :	1950,
(Offence under section 302 I.P.C.) :	

stating that Criminal Appeal No. 417 of 1950, filed by
Government against the acquittal of the accused in the
case noted in the margin, was dismissed by the High
Court, Bombay, on 14th November 1950.

Letter from the Government Pleader, High Court,
Bombay, No. 4015, dated the 23rd May 1952, forwarding
an uncertified copy of the High Court Judgment.

RESOLUTION:- The result of the appeal is recorded.

By order of the Governor of Bombay,

Original *Akbar S. Sarela*
Akbar S. Sarela. 15/7
Deputy Secretary to Government.

To

The Home Department,
The District Magistrate, Kanara.

BM.
15-7-

done
15/7

Submitted for signature
15/7
D.S. (in.)

